

PROPOSED PROBATE COURT RULE

RULE _____. PROBATE ACCOUNTS

(a) Accounts With Written Assent. If a fiduciary files his or her interim or final account with: (1) the proper filing fee; (2) the written assent or waiver of every person interested in the account; and (3) all tax receipts or tax waivers required by law, the court or magistrate may forthwith allow the account. If any interested person is, as defined in G.L. c. 190B, an incapacitated person, a protected person or a minor, the person's conservator or guardian of the estate shall sign any assent, unless the account is the conservator's or guardian's own account.

(b) Accounts Without Written Assent.

(1) Notice: Form. If the interim or final account of a fiduciary is filed for allowance with the proper filing fee and all tax receipts or tax waivers required by law, but without the written assent or waiver of every person interested in the account, notice of the proceeding for allowance of a fiduciary account or the account of a common trust fund shall be served in accordance with G.L. c. 190B, §1-401 on those persons required to be served by G.L. c. 190B, §1-401 and, if a conservator's account, G.L. c. 190B, §5-418. An account is deemed to be filed for allowance when it has been filed with the court and a citation, as described below, has been requested by the accountant or by some interested party or by the court. The notice, in the form of a citation issued by the court, shall specify a return date as set forth in General Rule 6 of the Probate Courts and provide that any person having an interest affected by the account:

(A) may file an appearance and objections to the account in the manner prescribed by G.L. c. 190B, §1-401;

(B) may, except in a proceeding to allow an account of a common trust fund, obtain, at no cost to himself or herself, a copy of the account by sending a written request, by certified or registered mail, to the accountant (fiduciary) or counsel. In a proceeding for the allowance of an account of a common trust fund, the notice shall provide that any person so requesting may obtain without cost to himself or herself a copy of the annual report of said common trust fund for the period of the account, and may obtain a copy of the account on request, subject to such terms, if any, as to cost which the court may determine upon application of the accountant.

(2) Guardian Ad Litem. If the court appoints a guardian ad litem to represent an individual or class interested in the account, the accountant shall forthwith serve upon the guardian ad litem a copy of the account and the citation. Such service shall be without cost to the guardian ad litem. The guardian ad litem shall file his or her report within sixty days following the return day, or as otherwise allowed by the court, and shall serve a copy of the report upon the accountant and upon any person who has filed an appearance in the proceeding and shall file proof of service with the court. The court may, upon ex-parte application or such notice as the court may require, extend the time for filing.

(3) Objection: Effect. If, at any time, there shall have been filed either (A) an appearance and an objection pursuant to par. (b)(1)(A) of this rule; or (B) a guardian ad litem's report containing an objection, the account shall thereafter be regarded as contested, and further proceedings shall be governed by the following rules, in addition to this rule, and none other: Mass.R.Civ.P. Rules 1, 4(h),

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5, 6, 7(b)-(c), 10(a) (first sentence, except that the caption shall retain the title and docket number of the underlying Probate Court proceedings), 11(a)-(d), 15, 16, 25-37, 40, 42-46, 52-54, 56-59, 61-65(a)-(d), 65.1, 67-71, 77-83, 85. Rule 60 shall apply, except that in granting relief under Rule 60(b) the following standard shall govern: after a final decree has been entered on any account hereunder, it shall not be impeached except for fraud or manifest error. Rule 60(b)(3) shall not apply. Any reference in any of the specified rules to “plaintiff” or “defendant” or to any particular type of pleading, shall not apply to any proceeding under this rule, except that the word “pleading” as it may appear in those rules shall be taken to include an account, objection, or report, as the case may be.

(4) Objection: Withdrawal. Any objection previously filed, whether by an interested person or a guardian ad litem, may be withdrawn by filing a statement to that effect, signed by the person or the guardian ad litem, or counsel, and served on any person (including, as necessary, the guardian ad litem) whose appearance is then on file. The conservator or, if there is no conservator, the guardian of an interested person may sign for the ward, incapacitated or protected person.

(5) Objection: Striking. Objections may be stricken by the court, if appropriate, pursuant to G.L. c. 190B, §1-401(f).

(6) Contested Accounts: Hearings. The accountant, any person whose objection is then on file, or the guardian ad litem may mark a contested account for hearing, or request that the court assign a hearing date; or the court may, sua sponte, assign a hearing date.

(7) Uncontested Accounts. An account shall be regarded as uncontested if:

(A) It has been filed pursuant to par. (a) of this rule; or

(B) After 10 a.m. on the return day (i) either no appearance is filed or any appearance or objection previously filed has been withdrawn or stricken; and (ii) the report of the guardian ad litem, if any, is on file and contains no objection.

Judgment on any uncontested account may be entered forthwith subject only to the provisions of Rule 60 as described in par. (b)(3) above.

Adopted _____, effective _____.

Reporter’s Notes –

Rule ____ has been added to the General Rules of the Probate Court. Rule ____ is intended to replace former Rule 72 of the Mass.R.Civ.P. Rule ____ includes many of the provisions of former Rule 72 of the Mass.R.Civ.P. that are not inconsistent with the Massachusetts Uniform Probate Code, G.L. c.190B, and was drafted with new provisions to conform to the new law.